

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1684 OF 2005

Shri Ramdas Manik Sonawane ..Petitioner.

Versus

Vidya Sahakari Bank & Ors. ..Respondents.

Mr. Tejas D. Deshmukh for the Petitioner.
Mr. Nitin Deshpande for the Respondent No.1.

CORAM : S. A. BOBDE, J.
DATED : 06TH OCTOBER, 2005.

P.C.:

1. At the request of the learned counsel for the petitioner, the names of the respondent Nos.2 and 3 are allowed to be deleted.

2. Rule returnable forthwith. Mr. Deshpande for the Respondents appears and waives service of rule. Heard by consent.

3. The petitioner has challenged the concurrent findings of the courts below that he is liable to pay to the respondent Bank, the amount borrowed by him. The trial court directed the petitioner to pay a sum of Rs.Four Lakhs with interest @ 17% per annum. The Appellate Court modified the Award by directing the petitioner to pay Rs.3,80,646/- with 9% interest per annum from the date of the dispute i.e. 12.07.1999

till realization.

4. The only contention raised on behalf of the petitioner is that the Bank was not justified in attaching J.C.B. Machine for which the petitioner took a loan and therefore, the Bank is not entitled to recover the loan amount because the attachment of the J.C.B. Machine, has resulted in the defaults of repayment. This point has been considered by the Appellate Court in paragraph 5 of its judgment. The appellate court has observed as follows :-

"5. It is the contention of appellants that bank had illegally attached and sold the J.C.B. Machine hypothecated with it. After reading the evidence as a whole, it is admitted position that appellant defaulted 5 instalments. After notice of Respondent Bank, appellant had paid those instalments, i.e. he tried to cure default. But 5 defaults were made is the admitted fact and as per terms in loan agreement, the Respondent Bank is entitled to attach vehicle hypothecated on account of default. Hence, attachment of vehicle cannot be termed as illegal, but I find it is wrong act done by

Respondent Bank when terms in agreement were substantially complied i.e. after 5 months, 5 instalments were paid, the Respondent Bank should have given some time to appellant. Hence, I find act of the Respondent Bank in attaching the vehicle on the ground of default is arbitrary though not illegal."

5. I see no error of law apparent on the face of this order since there is a clear finding of fact, based on the evidence, that the petitioner indeed committed the defaults of five instalments, as a result of which JCB machine was attached. Mr. Deshmukh, the learned counsel for the petitioner relied heavily on the observations of the appellate court that the machine was attached arbitrarily for non-payment of a security amount. According to the petitioner, the condition of depositing an amount by way of security was deleted and therefore, he was not bound to pay the security amount. This contention is refuted by Mr. Deshpande, the learned counsel for the Respondent, who points out that the condition of security was deleted in view of subsequent to the petitioner's having written a letter dated 28th December, 1997 that he had deposited a cheque of Rs.

Three lakhs and that cheque must be returned to him, if he pays a cash in lieu of the cheque. Admittedly, according to the respondent the said condition was deleted in view of the representation made by the petitioner. However, according to the respondent the cheque was dishonoured and the petitioner never paid the amount of security deposit after getting the condition of the security deposit deleted.

6. It is not necessary to render any finding on this aspect of the matter since the Award has been passed on the basis of the five admitted defaults, which entitled the Bank to resort to recovery proceedings.

7. There is no merit in the petition, which is hereby dismissed. Rule discharged.

DT.06.10.05

(S.A.BOBDE, J)

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